

STATE OF MICHIGAN
COURT OF APPEALS

GERALD E. OVERTON,

Plaintiff-Appellant,

v

MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS and CITIMORTGAGE, INC.,

Defendants-Appellees.

UNPUBLISHED

May 28, 2009

No. 284950

Wayne Circuit Court

LC No. 07-725429-CZ

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting defendants' motion for summary disposition and dismissing plaintiff's claim. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed suit against defendants on September 21, 2007, alleging *inter alia* that defendants committed fraud in conducting foreclosure proceedings against his property. Plaintiff had fallen into default of his June 2005 mortgage and received notice of it from defendants on March 21, 2007. Plaintiff made no attempt to cure the default, and so the property was advertised as a foreclosure sale for the next four weeks pursuant to MCL 600.3208. CitiMortgage purchased the property at public auction on April 18, 2007. The redemption period expired on October 18, 2007, and CitiMortgage was then vested with title "which the mortgagor had at the time of the execution of the mortgage." MCL 600.3236. At no point did plaintiff attempt to redeem the property or challenge the foreclosure proceedings directly.

Defendants sought summary disposition, arguing that plaintiff had no standing because he no longer had any interest in the property once the redemption period expired. They also argued that plaintiff's claims lacked legal and factual merit.

In plaintiff's absence, a hearing was held on defendants' motion on March 7, 2008, and the trial court granted defendants' motion. Plaintiff moved to vacate the order to allow him the opportunity to argue on the merits against defendants' summary disposition. Defendants asserted that plaintiff would have lost even if he had been given the chance to argue on the merits because none of his allegations successfully countered the fact that the foreclosure, and the opportunity to challenge it, were long over.

The trial court held a hearing on plaintiff's motion on April 4, 2008. The court heard plaintiff's arguments but concluded that they provided no basis for setting aside the summary disposition.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Once a party has raised and supported a challenge to the factual basis for another party's claim, the non-moving party must come forward with substantively admissible evidentiary proof, some statement of specific fact upon which to base his case. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

Defendants' arguments are legally and factually sound. Plaintiff's suit did not toll the redemption period. Plaintiff is simply trying to wage a collateral attack on the foreclosure of the property. Even if his assertions were true and the cases he cites indeed supported his arguments, plaintiff was required to raise the arguments when foreclosure proceedings began. Plaintiff made no attempt to stay or otherwise challenge the foreclosure and redemption sale. Although he filed his suit before the redemption period expired, that was insufficient to toll the redemption period. "The law in Michigan does not allow an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement and posting of notice in the absence of a clear showing of fraud, or irregularity." *Schulthies v Barron*, 16 Mich App 246, 247-248; 167 NW2d 784 (1969). Once the redemption period expired, all of plaintiff's rights in and title to the property were extinguished. *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942); MCL 600.3236.¹

We affirm. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jane E. Markey

¹ MCL 600.3236 provides, in pertinent part, with respect to a deed issued after foreclosure by advertisement:

"Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter, . . . but no person having any valid subsisting lien upon the mortgaged premises, or any part thereof, created before the lien of such mortgage took effect, shall be prejudiced by any such sale, nor shall his rights or interests be in any way affected thereby."